IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12455 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABAN CONSTRUCTION PVT. LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12455 of 2003

MR BG JANI for Petitioner No. 1

MR SIRAJ GORI A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 11/09/2003

ORAL JUDGEMENT

Amendment granted.

Rule. Mr. Siraj Gori learned A.G.P. waives service of rule on behalf of the respondent authorities.

2. In this petition, the petitioner has made a grievance that its equipment which is termed as a "Bull Dozer welding machine Unit" has been detained by the respondent authorities alongwith the trailer carrying the said machine at Songadh checkpost.

3. It is the case of the petitioner that the Bull Dozer welding machine is not a "motor vehicle" as per the provisions of Bombay Motor Vechiles Tax Act, 1958 and in no other State such a Bull Dozer welding machine is subject to any tax.

4. In pursuance of the notice issued by this Court, learned A.G.P. Mr.Siraj Gori has appeared and has submitted that the equipment in question is a "motor vehicle" and, therefore, the said equipment has been rightly detained by the respondent - authorities as no tax in respect of the said Bull Dozer welding machine has been paid by the petitioner. It has been also submitted by the learned A.G.P. that instead of challenging the impugned action of the respondent - authorities by filing an appeal, the petitioner has approached this Court. It is the case of the respondent - authorities that disputed question of facts are involved in this petition and, therefore, this petition should be rejected.

5. Upon hearing the learned advocates and upon looking to the fact that it is doubtful whether the Bull Dozer welding machine can be termed as a "motor Vehicle", it would be just and proper to direct the petitioner to file an appeal before the Transport Commissioner so that it can be ascertained whether the Bull Dozer welding machine can be termed as a "motor vehicle" and whether any tax can be levied in respect of the said equipment.

6. The petitioner shall file an appeal before the Transport Commissioner within a period of two weeks from today. During the pendency of the appeal, the petitioner shall not be constrained to make any payment by way of tax and the petitioner shall not take the Bull Dozer welding machine alongwith the trailer outside the territory of Gujarat without the permission of the Transport Commissioner.

7. While deciding the appeal, the Transport Commissioner shall take into consideration, whatever, evidence the petitioner adduces so as to show that the Bull Dozer welding machine is not a "motor vehicle". He shall also adduce evidence with regard to the date on

which the said equipment was brought in the State of Gujarat so that if there is any liability on the part of the petitioner to pay tax, the same may be levied on the said equipment from the date on which the equipment was brought within the territory of Gujarat.

8. I am sure, that the Transport Commissioner shall look into all submissions which might be made before him by the petitioner and shall also consider the judgments which the petitioner would like to refer to at the time of hearing. He shall also depute his representative to inspect the equipment in question so as to ascertain whether the equipment in question is a "Motor vehicle" as per the amended provisions of the Bombay Motor Vehicles Act. The petitioner shall give details about the location of the equipment to the Transport Commissioner so that the Transport Commissioner can depute his representative to inspect the equipment in question. The representative of the Transport Commissioner shall give intimation to the petitioner before having inspection of the equipment in question if, he thinks it necessary to have inspection of the equipment in question.

9. It is hoped that the Transport Commissioner shall decide the appeal as soon as possible and preferably within a period of two months from the date of the presentation of the appeal and the Transport Commissioner shall pass a speaking order so as to substantiate the final decision which he might take.

10. If the appeal is decided against the petitioner, the order which might be passed by the Transport Commissioner shall not be implemented for a period of 15 days from the date on which the order is despatched to the petitioner by Registered Post A.D.

10.1. In view of the above order, the equipment in question shall be released by the respondent authorities forthwith. The petitioner shall also file and undertaking to the effect that the equipment in question shall not be taken outside the territory of Gujarat.

In view of the above order, the petition is allowed. Rule is made absolute to the above extent with no order as to costs.

[A.R. DAVE, J.]

/phalguni/